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File No. S. and Summonses /57

Legal Deptt

A **BRANCH**

Subject:— Correspondence relating to suits and Summonses

P-15E

File No. S. and Summonses/57

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C O N T E N T S.

Legal Department File No. Suits and Summonses/51.

S.No.	R.I. / O.No.	Subject	Pages.
		Suits and Summonses.	
1.	2451. 8-2-1951.	Mr. Lal's Opinion -	1 - 4 (not copied)
2.	24019 5.12.50 - 17464 8.12.50	Examination of - witness residing in Bombay.	
	6908 2.4.51 6782 26.4.51.	Suit No.347 of 1951 M.S.Samant vs. State of Bombay -	5 - 12. (not copied)
3.	1652 24.4.51	Examination of witness residing in Bombay....	13 - 14. (not copied)
4.	Civil Suit No. 354 of 1951.	Summons in respect of -	15 - 16 (not copied)
5.	Spl. Suit No. 50 of 1951.	- - do - -	17 - 22. (not copied).
6.		Procedure of communication between Government of India and Pakistan	23-32. (not copied)
7.		Service of judicial processes etc....	33 36.
8.	Govt. of India No. F.31-11/48-Pak.II dt.3/9/49.	Suit No.21 of 1945 - Raghunandan Prasad vs. Shyam Narain -	37 - 40.
9.		Procedure of communications between Government of India and Pakistan.	41 - 46 (not copied).

P.T.O.

S.No.	R.I./ O.No.	Subject	Pages.
10.	Government of India D.7595/50-Pak.II, dtd. 16.10.50.	Examination of witnesses on commission in Pakistan	47 - 62.
11.		Procedure of Communications	63 - 72. (not copied)
12.	2012 2.2.51	Service of Judicial Processes.	73 -74. (not copied)
13.	12721 16.6.51	Procedure of Communications.	75 -78. (not copied).
14.	14078 19.7.51 13228 18.8.51.	-- do --	79 - 82
15.	9987 18.5.51 8247 25.5.51.	Service of Summons on Mr. A.E. Mena.....	83 -86. (not copied)

S-Co.

M.V.V.
13/8.

No.2233/46-54818-A,
Political and Services Department,
Bombay Castle, 17th November 1949.

From

M.D.Bhatt, Esquire, I.C.S.,
Chief Secretary to the Government of Bombay,
Political and Services Department.

To

The Secretary to the Government of India,
Ministry to External Affairs.

Subject:- Service of judicial processes etc.-
Arrangements between the Government
of India and the Government of
Pakistan, in respect of the ----

Sir,

I am directed to refer to Mr. Nambiar's letter No.F.31-4/48-Pak-II dated the 21st June 1948 and also to my letter No. 2233/46-2067-A , dated the 6th January 1949, on the above subject and to forward copies of a letter from the Registrar, High Court Appellate Side, Bombay, No.P-2323/48, dated the 18th December 1948 and its accompaniment. The Government of Bombay would be grateful to know whether there are any prospects of reaching an agreement in the matters with the Government of Pakistan in near future and whether in the meantime, the legal processes may continue to be sent to the parties direct on their known addresses by post.

Yours Faithfully,

Sd/-
17/11.

For Chief Secretary to the Government of
Bombay,
Political and Services Department.

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M.V.V.
2 12/6.

No.F.31-4/48-Pak.II.
Government of India,
Ministry of External Affairs,

New Delhi, the 5th December, 1949.

Jagat Singh Esquire,
Under Secretary to the
Government of India.

The Chief Secretary to the
Government of Bombay,
Political and Services,
Department, Bombay.

Subject:- Service of judicial processes etc.- Arrangements between the Government of India and the Government of Pakistan in respect of the -

Sir,

I am directed to refer to your letter No. 2233/46 - 54818 - A dated the 17th November 1949, on the subject mentioned ~~hereinx~~ above, and to say that there is no likelihood of reaching an early agreement, in the matter, with the Government of Pakistan and in the meantime/ the legal~~xx~~ processes may continue to be sent to the parties direct on their known addresses by post.

As regards the examination of witnesses in Pakistan on Commission in Civil Suits, I am directed to enclose herewith a copy of this Ministry's letter No.F.31 - 11/48 - Pak. II, dated the 3rd September, 1949, to the Government of Pakistan, for your information.

Yours faithfully,

Sd/- Jagat Singh,

Under Secretary.

4-Cs/M.V.V./12.6

No.F.31-11/48-Pak.II.
Government of India,
Ministry of External Affairs.

New Delhi, the 3rd Sept.1949.

From

Jagat Singh Esq.,
Under Secretary to the
Government of India.

To

The Secretary to the
Government of Pakistan, Ministry of
Foreign Affairs and Commonwealth
Relations, KARACHI.

Subject :- Suit No.21 of 1945 in the court of Civil Judge, Rae Bareli-Pt.Raghunandan Prasad versus Shyam Narain, etc -Non-return from Lahore of the Commission to examine Col. Clyde.

Sir,

I am directed to refer to the correspondence resting with your letter No.I.1/47 dated the 3rd April, 1948, on the subject mentioned above, and to say that the Government of India are advised that the courts in India can issue in civil cases commission, for examination of witnesses residing in Pakistan under Order XVI rule 5 read with section 77 of the Code of Civil Procedure, 1908, and the courts in Pakistan can execute the commissions in view of section 78 read with Order XVI (rule 17 in particular) of the Code of Civil Procedure, as in force in Pakistan. The absence of a reciprocal arrangement between the two Dominions on the subject does not effect the previsions of law in force in the two Dominions.

I am therefore to request that if there is no objection, the papers sent to the Senior Sub-Judge, Lahore, by the Civil Judge, Rae Bareli, along with the proceedings of the Commission in suit No.21 of 1945 - Pt. Raghunandan Prasad vs. Shyam Narain etc.

A-Cs.
M.V.V.
12/6.

If .....

if it has been executed, may kindly be obtained from the authorities concerned and returned to the Government of India at an early date. The present whereabouts of Col. Clyde may also kindly be intimated.

The enclosures relating to the suit No.21 of 1945 referred to above received with your letter under reference are returned herewith.

Yours faithfully,
Sd/- Jagat Singh,
Under Secretary.

Copy without enclosure forwarded to the Deputy Secretary to Government of the United Provinces, Judicial (A) Department, Lucknow, with reference to the correspondence resting with his letter No.2018/VII-703-47 dated the 13th June, 1949, which was acknowledged under this Ministry's No.D6177/49-Pak.II dated the 17th/18th June, 1949.

By order,
Sd/- Jagat Singh,
Under Secretary.

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12/6.

No. D.7995/50-Pak.II.

Government of India,
Ministry of External Affairs.

New Delhi, the 16th October, 1950.

From

Madan Lal Mehta
Under Secretary to the Government of India.

To,

The Chief Secretary to the Government of
Bombay, BOMBAY.

Subject:- Examination of witnesses on Commission
in Pakistan.

Sir,

I am directed to enclose herewith a copy of letter dated the 22nd August, 1950, from the Lalitmohan C.Gandhi, Advocate Surat, to the Solicitor to the Government of India, New Delhi, and of its enclosures and to say that the Government of India's letter No. F.31-4/48-Pak.II dated the 21st June, 1948, referred to in Mr. Gandhi's letter relates to legal processes like summonses etc. and does not relate to the execution of Commissions in Pakistan. Under Order XVI Rule 5 of the Code of Civil Procedure, 1908, Civil Courts in India can issue Commissions for the examination of witnesses residing in Pakistan and these Commissions can be executed by Courts in Pakistan under section 78 of the Code of Civil Procedure in force in Pakistan. The Government of Pakistan have accepted this legal position and such Commission can, therefore, be issued from India to Pakistan and vice versa.

Although there is no legal difficulty in

the.....

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the issue of such Commissions to Pakistan and their execution in Pakistan as stated above, in fact difficul - ties have arisen in transmission and payment of expenses in connection with the execution of the Commissions owing to the devaluation of Indian rupee and the non-fixation of an exchange rate between Indian and Pakistani currencies. The Government of Pakistan have intimated that Commissioners in Pakistan generally refuse to record evidence if their fee is not remitted ghm to them along with the Commission. They have suggested that the requisite fee should be sent in Pakistan currency along with the Commission papers. The Government of India can not agree to private parties remitting funds at the rate insisted upon by Pakistan as that would amount to an acceptance of that rate. I am, therefore, to request that this position may kindly be brought to the notice of the High Court at Bombay for their information.

Yours faithfully,

Sd/- Mandan lal Mehta,

Under Secretary.

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LALMOHAN C. GANDHI,
B.Sc., M.A. LL.B.
Advocate (O.S.)
District Government Pleader & Public Prosecutor.

Ardeshar Kotwat Road,
Surat 22nd August, 1950.

To,

The Solicitor to the Govt. of India,
New Delhi.

Subject:- Service of Legal processes issued by Indian Courts against persons residing in Pakistan.

Reference:- Your Letter No.236-S.C./49 dated 2nd May,1949.

Sir,

Some time back I inquired from you as to what is the procedure for examining the witness on commission in Pakistan. You were good enough to send me the required information by the letter above referred to. Thereafter I applied to the Civil Judge (J.D.) at Surat to issue commission for examining the witness in Pakistan through the proper court of that area. The commission papers were sent by the Court of Civil Judge (J.D.) at Surat through the District Judge of Surat to the High Court of Judicature at Bombay for sending them to the Pakistan Court through the Government . But the registrar, Appellate side of the High Court of Judicature at Bombay returned the papers to the District Judge informing him that the papers could not be sent to Pakistan through the Government and quoted letters from the Government of India, Ministry of External Affairs & Commonwealth Relations and the Secretary to the High Commissioner for India in Pakistan Nos. F.31/4/48 Pak. II dated 21/6/48 and 42/IHC/48/I 322 dated 9/5/48 respectively. The copy of the letter of the registrar and also the copies of the letterss referred to by him in the said letter are herewith sent for ready reference.
Then I drew the attention of the Court to your letter above 4-Cs.

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referred to which was already on the record and applied again to sent the commission to Pakistan Court. But the District Judge of Surat has detained those papers and asked me to write to you for clarification of this point. I have therefore to request you to let me know as to whether the Commission can be sent to the Court of Pakistan or not and if it can be sent please to send me the copy of the agreement or the notification under which it can be sent. Please to treat this matter as very urgent as the suit in which the Commission is applied for is an old one and it should now be disposed off as early as possible.

A line in reply by the return of post will very much oblige.

Thanking you in advance.

I remain,

Yours faithfully,

Sd/- .....

Enclosures:- (i) Copy of your letter, dated 2nd May 1949.

(ii) Copy of the letter of the Registrar Appellate Side High Court of Judicature at Bombay dated 14-6-50.

(iii) Copies of the letters of the Ministry of External Affairs, and Commonwealth Relations and Secretary to the High Commissioner of India for Pakistan.

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No. 238-S.O./49.

Government of India, Ministry of Law.

From

B.N.Lokur, Esqr.,
Assistant Solicitor to the
Govt. of India.

To

Lalitmohan C. Gandhi, Esqr.
Advocate (O.S.)
Ardeshar Kotwal Road,
Surat.

New Delhi, the 2nd May 1949.

Dear Sir,

Please refer to your letter of the 11th April 1949 addressed to the Secretary, Home Department, Government of India.

2. I am directed to state that it is not clear to which letter of the Government reference is made in para 2 of your letter but that under section 78 of the Code of Civil Procedure as in force in Pakistan the Courts in Pakistan are bound to execute commissions issued by Courts in India.

Yours faithfully,

Sd/- B.N.Lokur.

Assistant Solicitor to the
Govt. of India.

4-Cs.

M.V.V.
13/6.

By Registered Post A.D.

From

Shri S.B.Palekar,B.A.(Hons) LL.B.
Registrar, High Court, Appellate Side,
Bombay No.1.

To

The District Judge, Surat.

No.X.5703/59.

Dated 14.6.50.

Subject : Letter of Request.

Issued by the Joint Civil Judge,
(J. & D.) Surat in Regular Civil Suit
No.433 of 1946.

References:- Your letter No.1660, dated the 7th June, 1950.

Sir,

I am directed to return herewith the letter of request issued by the Joint Civil Judge (J.D.) Surat in Regular Civil Suit No.433 of 1946 and to request you to send the same direct to the party concerned at his known address by post, as directed by Government of India by their letter, Ministry of External Affairs and Commonwealth Relations, No. F.31-4/48-Pak. II dated the 21st June 1948, copy of which was forwarded to all the District Judges by the Government of Bombay under their endorsement Political and Services Department No. 2239/46-A dated the 20th July 1948.

Yours faithfully,
Sd/- S.B.Palekar,
Registrar.

4-Cs./M.V.V./13.6

Copies of a letter from the Government of India, Ministry of External Affairs and Commonwealth Relation, No. F.31-4/48-Pak. II dated the 21st June 1948 and its accompaniment.

Subject:- Service of Legal Processes issued by Indian Courts against persons residing in Pakistan.

I am directed to forward copy of letter No.S/42/IHC 48/I 322 dated the 19th May 1948, from the Secretary to the High Commissioner for Indian in Pakistan, Karachi, on the subject mentioned above. The question of making reciprocal arrangement between the two Government for the Services of processes in their territorries is under - consideration. Until an arrangement is reached in the matter the courts in the Provinces of Madras may be adfised to take action as suggested in the last paragraph of the enclosed letter.

Copy of letter No.S.42/IHC/48/I 322 dated the 19th May 1948, from the Secretary to the High Commissioner for India in Pakistan to the Secry to the Govt. of India ministry of Ex. Affairs and common wealth relations, New Delhi.

Subject:- Service of legal processes issued by Indian Courts against residing in Pakistan.

I have the honour to say that this office is daily receiving summonses and other legal processes issued by Civil Courts and Criminal Courts in India for service against persons residing in Pakistan. In the begining such processes were being sent by this office to the Government of Pakistan for serving but the Government of Pakistan returned them unserved with the remarks that no arrangement existed between the Governments of India and Pakistan for service of legal.....

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process .....

processes of their respective courts through their High Commissioner. This office therefore returned the processes to the issuing Courts for service on the parties direct by post.

It is now observed that some courts in India instead of sending processes to parties direct by post send them for service to the Government of Pakistan direct such processes are also returned by Pakistan Government to this office with similar remarks.

To avoid unnecessary expense in sending processes to this office or to the Government of Pakistan and their eventual return to the issuing courts, I would suggest that the provincial Governments may be advised to issue circular for the guidance of their respective courts, that until arrangements has been reached between the two Dominion Government with regard to the service of legal processes, they may send the processes to the parties direct on their known addresses by post .

No.2233/46-A.
Political and Services Department,
Bombay Castle, 20th July 1948.

F.W.C. for information and guidance to .....

4-Cs.

H.V.V.
13/6.

No.F.33-2/51-Pak.II.
Government of India,
Ministry of External Affairs.

New Delhi the 17th July 1951.

From

Shri S.N. Sheopori,
Assistant Secretary to the Government of India.

To

The Secretary to the Government of Bombay,
Legal Department, Bombay.

Subject:- Examination of witnesses residing in Pakistan on commissions.

Sir,

With reference to the correspondence resting with your letter No. 10410 dated the 30th June 1951 on the subject noted above, I am directed to say that since the Government of India have recognised the Pakistan rate of exchange, the exchange difficulties no longer exist. It has, therefore, been desired that necessary remittances for the execution of commission etc., in Pakistan may be made direct, by the Court concerned in India to the Court concerned in Pakistan. Such remittances should be in Pakistan currency and will be permitted as "legal charges" by the Reserve Bank of India on application being made to any of its offices.

Yours faithfully,

Sd/-S.N.Sheopori,

Assistant Secretary.

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N.V.V.
13/8.